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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John H. Schneider

Art Unit: 3728

Serial No.: 09/916,546

Examiner: John G. Pickett

Filed: July 27, 2001

Customer No. 29540

For: **METHOD FOR MANUFACTURING TAMPER
EVIDENT RECLOSABLE BAGS**

TRANSMITTAL OF APPEAL BRIEF

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S I R:

Enclosed is an original brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This Appeal Brief is being filed pursuant to the Notice of Appeal dated September 10, 2004, with an apparent Office filing date of September 13, 2004. A check for the Rule 17 fee for filing an appeal brief is enclosed herewith. Any other fees may be charged to Deposit Account 50-1145, Order No. 769-283.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Application Serial No. 09/916,546

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**METHOD FOR MANUFACTURING TAMPER EVIDENT
RECLOSABLE PLASTIC BAGS**

Ex parte: John H. Schneider

BRIEF FOR THE APPELLANT

Pitney Hardin LLP
Attorneys for the Appellant

I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

None

III. STATUS OF CLAIMS

Claims 1-4, 6-8, 10, 11 and 13-15 are rejected.

IV. STATUS OF AMENDMENTS

The Response mailed June 10, 2004 (with an apparent Office filing date of June 14, 2004) did not amend the claims. This response was followed by an Advisory Action dated July 23, 2004. The Notice of Appeal was filed September 10, 2004 with an apparent Office filing date of September 13, 2004.

V. SUMMARY OF INVENTION

The presently claimed invention is a method for producing a tamper-evident reclosable plastic bag (Fig. 1, element 10) comprising the steps of: providing a zipper with first and second zipper profiles (Fig. 2, elements 40, 42) that include mating interlocking members, the first and second zipper profiles further including separate first and second flanges (Fig. 2, elements 46, 44, respectively), respectively, the second flange (Fig. 2, element 44) being longer than the first flange (Fig. 2, element 46) and the second flange including a proximal portion and a distal

portion with a tamper evident feature (Fig. 1, element 28; Fig. 2, element 30; Fig. 3, element 32; page 3, printed lines 8-14) interposed between the proximal and distal portions, the proximal portion being more closely spaced to the second profile interlocking member than the distal portion, wherein a slider (Figs. 2 and 3, element 26) is positioned over the interlocking members; positioning the zipper (Fig. 4, element 36) on a web of bag making film (Fig. 4, element 38) with the second interlocking zipper member atop the first interlocking zipper member (Fig. 4, element 36 and surrounding area) with the first and second flanges extending in a longitudinally moving direction of the web thereby orienting the zipper in a direction transverse to a machine direction of the web to a form, fill and seal machine (Figure 4, element 34); securing the second flange distal portion to the web spaced from the first flange in the longitudinally moving direction of the web (page 3, last three lines – page 4, lines 1-4); and transporting the web in the longitudinally moving direction to the form fill and seal apparatus.

VI. ISSUES

1. Are claims 1-4, 6, 8, 10, 11 and 13-15 patentable under 35 U.S.C. §103(a) over the Malin reference (U.S. Patent No. 6,115,892) in view of the May reference (U.S. Patent No. 5,647,671) and Van Erden reference (U.S. Patent No. 6,212,857)?

2. Is claim 7 patentable under 35 U.S.C. §103(a) over the Malin reference in view of the May and Van Erden references, and further in view of the Boeckmann reference (U.S. Patent No. 5,023,122)?

VII. GROUPING OF CLAIMS

The claims stand together for each ground of rejection.

VIII. ARGUMENTS

1. Are claims 1-4, 6, 8, 10, 11 and 13-15 patentable under 35 U.S.C. §103(a) over the Malin reference (U.S. Patent No. 6,115,892) in view of the May reference (U.S. Patent No. 5,647,671) and Van Erden reference (U.S. Patent No. 6,212,857)?

Appellant respectfully submits that a prima facie case of obviousness has not been set forth against claim 1, and therefore dependent claims 2-4, 6, 8, 10-11 and 13-15. As set forth in §2142 of the Manual of Patent Examining Procedure (M.P.E.P.), a prima facie case of obviousness requires three basic criteria to be met:

First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined), must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not on the applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)(emphasis added).

First, Appellant respectfully submits that one skilled in the art would not be motivated to make the above-cited combination in attempt to achieve the invention of claim 1, as amended. Specifically, claim 1 as amended requires that the flanges of the zipper be separate and that they

extend in the longitudinal direction of the web, which is the same direction as the machine direction. The result of this orientation is that in the completed bag the separate flanges will extend toward the bottom the bag. However, Malin (the primary reference) discloses in Figs. 3 and 4 separate zipper flanges that extend in the direction opposite to the machine direction. The result of this orientation is that in the completed bag the separate flanges extend toward the top of the bag and not the bottom. On the other hand, May is completely silent as to whether its flanges extend in the machine direction or not when they are secured to the web. Finally, Van Erden discloses in Fig. 2 that its flanges are attached to each other (i.e., are not separate) when the zipper is secured to the web. Thus, Appellant does not see how one skilled in the art would be motivated to make the above-cited combination in an attempt to achieve the present invention in view of their contradictory teachings.

Moreover, Appellant submits that the above-cited combination is improper since the combination would alter the principle of operation for Malin, the primary reference. As set forth in §2143.01 of the M.P.E.P., “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).” As noted above, Malin requires its separate zipper flanges to extend in the direction opposite to the machine direction. See e.g., Figs. 3 and 4 of Malin. The proposed modification of Malin would therefore alter this principle of operation for its disclosed form, fill and seal method. As a result, a prima facie case of obviousness does not exist with the above-cited combination of prior art.

Likewise, Appellant submits that the above-cited combination fails to teach or suggest a method where a slider-equipped zipper is provided with separate zipper flanges extending in the

machine direction. The only reference in the above-cited combination disclosing a slider-equipped zipper is Van Erden. However, Van Erden (just like Malin) requires its zipper flanges extending in the machine directed to be attached to each other (i.e., not separate). See e.g., Fig. 2 of Van Erden. Thus, Appellant does not see how all the limitations of claim 1, as amended, are taught or suggested.

In addition, Appellant submits that the claims are not obvious for following reasons. First, one skilled in the art would not be motivated to combine Malin with May since Malin and the present invention are directed to the transverse application of the zipper while May is not. Appellant points out that a close inspection of the figures in May show that the zipper strip is not applied to the film transverse to the machine direction. The figures of May (e.g., Fig. 1) show that there is no film seal or seam above the zipper strip. However, an inspection of Malin shows that when a zipper is applied transversely to the film web seals or seams are created above and below the zipper strip. *See* Malin FIG. 12; *see also* col. 5, line 51 – col. 6, line 3. As a result, May does not teach or suggest transverse application of a zipper but instead the longitudinal application of a zipper.

While the Examiner contends there is motivation to combine Malin with May for the purpose of seal strength control, Appellant submits that the Examiner fails to take in consideration the disparate teachings of Malin and May regarding zipper application as noted above. As set forth in the Manual of Patent Examining Procedure (M.P.E.P.), “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” §2141.02 (citation omitted). Appellant submits that one skilled in the art would not be motivated to combine Malin with May due to their disparate teachings on zipper application.

Second, even if Malin and May were proper to combine, Appellant submits that the addition of Van Erden to the combination fails to provide a reasonable expectation of success of achieving Appellant's claimed invention. The Examiner sets forth in the Office Action that one skilled in the art would be motivated to separate the flanges of Malin as taught by May where the second flange would be longer than the first flange. *See* Office Action (March 10, 2004) at paragraph 5, page 7. The Examiner additionally replicates FIG. 4 of Malin to illustrate his position. However, Appellant respectfully submits that one skilled in the art would be unable to apply the slider of Van Erden to the zipper of Malin since flanges 26 and 28 prevent a slider from being inserted onto the zipper. In order for a slider to be applied to a zipper, the slider must be able to straddle the interlocking profiles of the zipper. This fact is clearly seen in FIG. 1a of Van Erden, which shows zipper 12 with slider 14 straddling first and second profiles 16,18. *See* Van Erden at col. 2, lines 24-47. It is additionally clear that flanges 26 and 28 of Malin's zipper shown in FIG. 4 will prevent any potential slider from straddling the zipper. Accordingly, the combination of Malin, May and Van Erden, even if proper, fails to provide one skilled in the art a reasonable expectation of success of applying a slider to the zipper of Malin.

Thus, a prima facie case of obviousness has not been set forth and the above rejections should be withdrawn. First, there is no motivation for combining Malin with May and Van Erden due to their contradictory teachings. Second, the combination of Malin with May and Van Erden would impermissibly alter the principle of operation for the form, fill and seal method of Malin. Finally, Malin with May and Van Erden do not teach or suggest all the limitations of claim 1, as amended. Therefore, claim 1 and dependent claims 2-4, 6, 7, 8, 10-11 and 14-15 are patentable.

2. Is claim 7 patentable under 35 U.S.C. §103(a) over the Malin reference in view of the May and Van Erden references, and further in view of the Boeckmann reference (U.S. Patent No. 5,023,122)?

It is respectfully submitted that all of the above arguments are equally applicable to the rejection of Claim 7, and that the Boeckmann reference does nothing to resolve the deficiencies of the above rejection of independent Claim 1 and dependent claims 2-4, 6, 8, 10-11 and 13-15. Therefore, Claim 7 is patentable over the above-cited references.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Levy", with a long horizontal flourish extending to the right.

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IX. APPENDIX OF PRESENTLY PENDING CLAIMS

1. A method for producing a tamper-evident reclosable plastic bag comprising the steps of:

providing a zipper with first and second zipper profiles that include mating interlocking members, said first and second zipper profiles further including separate first and second flanges, respectively, said second flange being longer than said first flange and said second flange including a proximal portion and a distal portion with a tamper evident feature interposed between said proximal and distal portions, said proximal portion being more closely spaced to said second profile interlocking member than said distal portion, wherein a slider is positioned over said interlocking members;

positioning said zipper on a web of bag making film with said second interlocking zipper member atop said first interlocking zipper member with said first and second flanges extending in a longitudinally moving direction of said web thereby orienting said zipper in a direction transverse to a machine direction of said web to a form, fill and seal machine;

securing said second flange distal portion to said web spaced from said first flange in said longitudinally moving direction of said web; and

transporting said web in said longitudinally moving direction to said form fill and seal apparatus.

2. The method in accordance with claim 1 wherein said first flange is hard sealed to said web and said proximal portion of said second flange is hard sealed to said web after said web is formed into a tube.
3. The method of Claim 1 wherein said second flange distal portion is sealed to said web with a peel seal.
4. The method of Claim 1 wherein said second flange tamper evident feature comprises a frangible section between said distal portion and said proximal portion and said distal portion is sealed to said web with a hard seal.
5. Cancelled.
6. The method of Claim 4 wherein said frangible section includes a perforated line.
7. The method of Claim 6 wherein said perforated line is covered by a frangible cap layer.
8. The method of Claim 4 wherein said frangible section includes a scored or thinned line of weakness.
9. Cancelled.
10. The method of claim 1 comprising the further step of sealing said first flange to said web.
11. The method of claim 10 comprising the further step of sealing said proximal portion of said second flange to said web.
12. Canceled.

13. A bag formed by the method of Claim 1.

14. The method of claim 1, wherein said distal portion of said second flange is secured to said web spaced apart from said distal portion of said first flange.

15. The method of claim 1, wherein during securing of said second flange to said web said first flange remains unsecured to said web.